

No. 83-284

IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1983

JOHN C. MOON and ZION INDUSTRIAL  
CORPORATION,

Petitioners,

vs.

HYOSUNG AMERICA, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE NINTH  
CIRCUIT BEFORE JUDGMENT

MOTION FOR DAMAGES PURSUANT TO  
SUPREME COURT RULE 49.2; DECLARATION  
OF MILES N. RUTHBERG

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Counsel of Record

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Attorneys for Respondent,  
Hyosung America, Inc.

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MOTION FOR DAMAGES PURSUANT TO  
SUPREME COURT RULE 49.2

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Respondent Hyosung America, Inc. respectfully moves for an award of damages pursuant to Supreme Court Rule 49.2. Petitioners are seeking certiorari before judgment in the Ninth Circuit. As set forth in Respondent's Brief in Opposition, filed concurrently herewith, the petition for certiorari ("the Petition") is frivolous. With all respect, petitioners have made a mockery of Supreme Court Rule 18 by invoking it in this case. Far from involving matters "of such imperative public importance as to justify the deviation from normal appellate practice" requested by petitioners, this is a diversity case involving run-of-the-mill issues of federal practice and procedure.

Accordingly, respondent seeks appropriate damages pursuant to Supreme Court Rule 49.2. As set forth in the attached Declaration of Miles N. Ruthberg, respondent's attorneys' fees and printing costs in responding to this frivolous petition will total in excess of \$3,000. Respondent respectfully requests an award of at least such amount.

Dated: September 22, 1983.

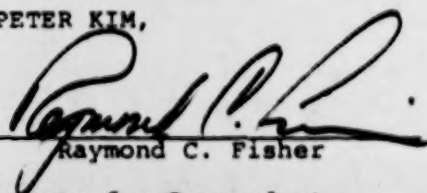
Respectfully submitted,

RAYMOND C. FISHER,  
Counsel of Record

MILES N. RUTHBERG,  
TUTTLE & TAYLOR INCORPORATED,

Y. PETER KIM,

By



Raymond C. Fisher

Attorneys for Respondent  
Hyosung America, Inc.

FILED

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

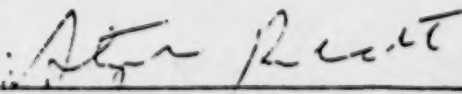
AUG 11 1983

PHILIP B. WINBERRY  
CLERK OF COURT OF APPEALS

HYOSUNG AMERICA, INCORPORATED,	)	No. 82-6099
	)	
Plaintiff-Appellee,	)	DC# CV 81-4784-R
	)	Central California
vs.	)	
	)	
JOHN C. MOON and ZION INDUSTRIAL CORP.,	)	ORDER
	)	
Defendants-Appellants.	)	
	)	

Before: REINHARDT, Circuit Judge.

Appellants have informed the court of an intent to seek review of the court's order of May 24 in the Supreme Court. This does not relieve appellants of their obligation to dilligently prosecute this appeal. They will contact the office of the conference attorney within 7 days of the entry of this order to schedule a prebriefing conference. Failure to do so will result in dismissal of the appeal under 9th Cir. R. 19(b).

  
United States Circuit Judge

1-J 8/10/83

DECLARATION OF MILES N. RUTHBERG

I, Miles N. Ruthberg, declare as follows:

1. I am a member of the Bars of the Supreme Court of California and the District of Columbia Court of Appeals, and am a member of Tuttle & Taylor Incorporated, counsel for respondent Hyosung America, Inc. in this case.

2. I have been responsible for this case in the United States Court of Appeals for the Ninth Circuit and, under the supervision of Raymond C. Fisher of Tuttle & Taylor Incorporated, have been responsible for preparing the papers in opposition to the petition for certiorari in this Court. I make this Declaration in support of respondent's motion for damages pursuant to Supreme Court Rule 49.2.

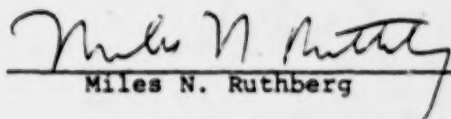
3. Including Mr. Fisher's time, my own time, and the time of Y. Peter Kim, co-counsel in this matter, a total of approximately 20 hours of attorney time have been expended in responding to the petition for certiorari, for a total cost of approximately \$2,500. The bulk of this time was expended on the brief in opposition to the certiorari petition; the remainder of the time was expended on the motion for damages.

4. Respondent has also incurred printing costs in excess of \$500 for the printing of respondent's brief in opposition to the petition for certiorari.

5. Respondent has thus incurred costs in excess of \$3,000 in responding to the petition for certiorari.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Los Angeles, California this 22nd day of September, 1983.

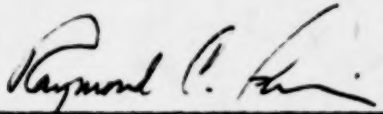
  
Miles N. Ruthberg

CERTIFICATE OF SERVICE

I, Raymond C. Fisher, a Member of the Bar of this Court, hereby certify that on September 22, 1983, I served the foregoing Motion for Damages Pursuant to Supreme Court Rule 49.2; Declaration of Miles N. Ruthberg on petitioners John C. Moon and Zion Industrial Corporation in this action in compliance with Supreme Court Rule 28.3 by causing a true copy thereof, enclosed in a sealed envelope with first-class postage prepaid, to be deposited in the United States mail at 609 South Grand Avenue, Los Angeles, California 90017, addressed to counsel of record for petitioners as follows:

Alfred A. Calabro  
124 South Isabel Street  
Glendale, California 91205

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Raymond C. Fisher